

United States Courts
Southern District of Texas
FILED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

JUL 20 2020

David J. Bradley, Clerk of Court

UNITED STATES OF AMERICA, Plaintiff,)

v.)

OSCAR NAVA-VALENCIA, Defendant)

Case No. 4:08-CR-00237-001

**MOTION FOR REDUCTION OF SENTENCE PURSUANT TO
18 U.S.C. § 3582(c)(2) UNDER AMENDMENT 782 AND 788**

NOW COMES Defendant, Oscar Nava-Valencia, proceeding pro se requesting a modification and reduction of his sentence pursuant to the United States Sentencing Guideline (U.S.S.G.) Amendments 782 and 788.

JURISDICTION

Effective November 1, 2014, the Sentencing Commission reduced the Quantity that determined the Base Offense Level in drug Trafficking Guidelines, § 2D1.1, by two levels. See U.S.S.G. App. C, Amendment 782. The Commission also made the lower base offense levels "**retroactively applicable**" to people who, like the Defendant was sentenced under the previous version of the guidelines. Defendant was sentenced on January 7, 2014. See U.S.S.G. App. C, Amendment 782; U.S.S.G. § 1B1.10(d), p.s. (November 14) (listing amendment 782 as a covered amendment).

FACTUAL AND PROCEDURAL BACKGROUND

On January 7, 2014, Defendant was sentenced to 300 months. On November 20, 2019, Defendant was re-sentenced to 200 months under Rule 35, which was a 33% reduction.

I. ELIGIBILITY FOR SENTENCE REDUCTION UNDER § 782 & 788

A district court may reduce a defendants term of imprisonment when he was originally sentenced, based on a Guideline Range that has subsequently been lowered by the United States Sentencing Commission. 18 U.S.C. § 3582(c)(2). See **Henderson**, 636 F. 3d. at 717. Proceedings under § 3582(c)(2), are not full **Booker-style** re-sentencings. **Dillon v. United States**, 560 U.S. 817, 825-30 (2010); **U.S. v. Dublin**, 572 F. 3d. 235, 238 (5th Cir. 2009) (per curium). Instead, in deciding whether to reduce a sentence, a court must conduct a two-step inquiry. "Step one of the inquiry requires the court to follow the instructions in U.S.S.G. § 1B1.10 to determine whether the prisoner is eligible for a sentence modification and the extent of the reduction authorized." "Step two requires the Court to consider any applicable § 3553(a) factors and determine whether, in the discretion, the reduction authorized by [§ 1B1.10] is warranted in whole or in part under the particular circumstances of the case." **Henderson**, 636 F. 3d. at 717 (quoting **Dillion**, 560 U.S. at 827).

In effect as of November 1, 2014, and pursuant to 18 U.S.C. § 3582(c)(2), Defendant respectfully moves this Honorable Court to reduce his sentence, as grounds would state:

A) As of November 1, 2014, an amendment to the United States sentencing Guidelines § 2D1.1(c) eliminates base offense level 38 from the drug quantity table. This particular amendment was given "Retroactive Effect" on November 1, 2014. See U.S.S.G. § 1B1.10.

B) Based on the Drug Quantity Table as it existed at the time

of sentencing and conviction, the Defendant was sentenced to a term of 300 months.

C) Because the Defendant was sentenced to an inappropriate range outside of the new range, he is entitled to a reduction of some points as well as for a downward departure for post conviction rehabilitation and Rule 35 application. See *Koon v. U.S.*, 135 LED 2d. 392 (1996); *U.S. v. Mirna Rivera*, 994 F. 2d. 942 (1st Cir. 1993); *United States v. Rhodes*, 145 F. 3d. 1375 (D.C. Cir. 1998); *Koon v. U.S.*, 518 U.S. 87 (1996); *Pepper v. U.S.*, 562 U.S. at (slip Op. 13) (quoting 3553(a)). The district courts tasks are to impose sentences that reflect the Punitive Goals of Justice, Deterance, Protection of the Public, and above all Rehabilitation. While this is easily stated, it is difficult to achieve.

Amendment 782 of the U.S.S.G. amended § 2D1.1(c), by deleting level 38 in lieu thereof. Amendment 782 was explained as follows:

* This Amendment sets the upper limit of the Drug Quantity Table in section 2D1.1 at level 36. The commission has determined that the extension of the Drug Quantity Table above level 36 for quantity itself is NOT required to ensure adequate punishment given that organizers, leaders, managers, and supervisors of such affairs will receive a 2, 3, or 4 level enhancements for their role in the offense, and a participant will receive an additional 2 points, if a dangerous weapon was involved.

The retroactivity of Amended Guideline Range Policy Statement,

enumerates precisely what amendments are to be given "Retroactive Effect." Amendment 505 amended § 1B1.10 to include Amendment 782 as one of the Amendments to be given retroactive effect. The effective date of Amendment 782 was November 1, 2014, level 36 is the highest level of the Drug Quantity Table itself.

OLD AND NEW GUIDELINE RANGE

I. Old Guideline range.

U.S.S.G. § 2D1.1 (5 Kilograms of Powder	38
U.S.S.G. § 3B1.1 (Organizer	+4
Subtotal	42
Acceptance of Resonsibility	-3
Total	39
Rule 35	-4
Total	35
Criminal History Category	I
Guideline range	168 to 210 months

Original the court sentenced Defendant to 300 months, with a downward departure on November 20, 2019, which gave Defendant 200 months from a 4 point reduction in the Guideline Range.

II. New Guideline Range.

U.S.S.G. § 2D1.1 (5 Kilograms of Powder	36
U.S.S.G. § 3B1.1 (Organizer	+4
Subtotal	40
Acceptance of Responsibility	-3
Total	37
Rule 35 Application	-4
Total	33

Criminal History Category

I

Guideline Range 135 to 168 months

Defendant was sentenced to the bottom of his guideline range, under 3553(a) for his Rule 35 and for his post-conviction **Rehabilitation efforts while incarcerated.**

3553(a) FACTORS

Nava-Valencia is submitting a long record of programming in which he has participated. He has completed **English Proficient** and has **Earned his GED**. He has completed over 80 Educational classes since April 4, 2014, which is remarkable. He has **NO** Disciplinary reports during his incarceration, and has been a model prisoner. Defendant has a family support system here in the United States. Upon his release he has employment. His Post incarceration conduct assures the Court that his history and characteristics no longer call for imprisonment. He is very involved in the Religious Community here at Butner 1, and is well thought of by Staff and inmates alike.

Furthermore, Defendant is the biggest **"Hot Spot"** in the BOP for the **"coronavirus"** where over 20 inmates have died and several staff. There is no ability to social distance in prison, and every day his life is at risk of serious illness or death.

CONCLUSION

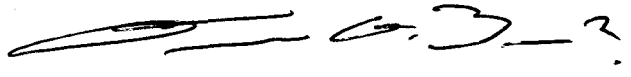
Defendant request that this Honorable Court exercise its discretion in reducing Mr. Nava-Valencia's sentence, since it is applicable and he is eligible for the two point reduction. Defendant requests that this Honorable Court view all the information outlined in this motion and **GRANT** his petition to reduce his sentence to 135 months which is the bottom of his new Guideline Range.

PRAYER OF RELIEF

The Defendant PRAYS that the God of creation intervene in the hearts of man, that the truth may prevail over deception, that law may prevail over lawlessness. God move the heart of the Proceeding Judge in this Honorable Court and to take Judicial Notice of the Herein, and make a Judicial determination thereof and issue orders GRANTING this petition and an immediate release.

Executed: July 13, 2020

Respectfully submitted,

/s/ 
Oscar Nava-Valencia

**Individualized Reentry Plan - Program Review (Inmate Copy)**

SEQUENCE: 01662992

Dept. of Justice / Federal Bureau of Prisons

Team Date: 03-05-2020

Plan is for inmate: NAVA-VALENCIA, OSCAR 84193-279

Facility: BUT BUTNER MED I FCI Proj. Rel. Date: 04-10-2025
 Name: NAVA-VALENCIA, OSCAR Proj. Rel. Mthd: GCT REL
 Register No.: 84193-279 DNA Status: HOU03083 / 06-14-2011
 Age: 48
 Date of Birth: 03-29-1971

Detainers

Detaining Agency	Remarks
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NO DETAINER

Current Work Assignments

Fac	Assignment	Description	Start
BUT	FS AM DR	FCI FOOD SERVICE AM DININGROOM	02-11-2020

Current Education Information

Fac	Assignment	Description	Start
BUT	ESL HAS	ENGLISH PROFICIENT	06-18-2015
BUT	GED EARNED	GED EARNED IN BOP	01-14-2013

Education Courses

SubFac	Action	Description	Start	Stop
BUT		CAMP WELLNESS ABDOMINAL CLASS	01-31-2020	CURRENT
BUT		CAMP WELLNESS AEROBICS	01-31-2020	CURRENT
BUT		BUS & MKT CONCEPTS M 6-8:30	01-10-2020	CURRENT
BUT		BUSINESS MANAGEMENT	01-10-2020	CURRENT
BUT		NCCER CORE 1230-1530 PM	09-17-2019	CURRENT
BUT		CAMP WELL SPINNING CLASS	01-31-2020	CURRENT
BUT		GEOGRAPHY	01-10-2020	CURRENT
BUT		EXAMINES CIVIL & CRIMINAL LAW	01-10-2020	CURRENT
BUT		BASIC REAL ESTATE	01-10-2020	CURRENT
BUT		SPANISH	01-10-2020	CURRENT
BUT GP	C	LOGISTIC 1	09-06-2019	12-18-2019
BUT GP	C	SPANISH 3;T&TH-12:30-2:30	08-26-2019	11-26-2019
BUT GP	C	INTRO TO COMMODITIES TRADING	09-09-2019	11-26-2019
OAD	W	DISCIPLESHIP CLASS 1	11-01-2018	03-12-2019
OAD	C	WIN THE PEOPLE	10-29-2018	01-08-2019
OAD	C	CREDIT (RPP#3)	10-29-2018	12-10-2018
OAD	C	ACE INTERMEDIATE HORTICULTURE	09-24-2018	12-17-2018
OAD	W	PRISON FELLOWSHIP (RP6)	11-06-2018	11-08-2018
OAD	W	DISCIPLESHIP CLASS 1	11-01-2018	11-01-2018
OAD	C	DRAWING	05-02-2018	10-30-2018
OAD	W	DISCIPLESHIP CLASS 1	05-24-2018	10-30-2018
OAD	W	PRISON FELLOWSHIP (RP6)	06-18-2018	06-19-2018
OAD	W	PRISON FELLOWSHIP (RP6)	03-20-2018	06-11-2018
OAD	W	DISCIPLESHIP CLASS 1	09-06-2017	05-17-2018
OAD	W	FINANCIAL PEACE UNIV RPP3	02-07-2018	03-14-2018
OAD	C	SOFTBALL OFFICIAL	10-21-2017	11-12-2017
OAD	C	DISCIPLESHIP CLASS 1	05-17-2016	10-25-2016
OAD	C	ACE HORTICULTURE	06-20-2016	09-22-2016
OAD	C	PRISON FELLOWSHIP (RP6)	09-20-2016	09-20-2016
OAD	C	WOOD WORKING	06-28-2016	07-21-2016
OAD	C	SOFTBALL OFFICIAL	04-28-2016	05-20-2016
OAD	C	DISCIPLESHIP CLASS 1	12-10-2015	05-04-2016
OAD	C	AFRICAN ART/DANCE	04-11-2016	04-20-2016
OAD	C	INSIDE OUT DAD RPP6 EVID-BASED	01-06-2016	03-31-2016
OAD	C	PRISON FELLOWSHIP (RP6)	03-15-2016	03-24-2016
OAD	C	ADVANCED GUITAR	02-02-2016	03-23-2016
OAD	C	ULTIMATE NATURE-ACE CLASS	01-26-2016	03-03-2016



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SubFac	Action	Description	Start	Stop
OAD	C	FINANCE RPP3	11-02-2015	01-19-2016
OAD	C	INTERMEDIATE GUITAR	11-16-2015	01-09-2016
OAD	C	MONEY SMART RPP3 EVID.-BASED	08-17-2015	12-15-2015
OAD	C	PRISON FELLOWSHIP (RP6)	11-17-2015	11-18-2015
OAD	C	YOGA	09-21-2015	11-27-2015
OAD	C	HOME IMPROVEMENT 2	11-03-2015	11-17-2015
OAD	C	CAREER PLANNING	09-02-2015	10-22-2015
OAD	C	PHOTO I	09-15-2015	10-15-2015
OAD	C	BEGINNING GUITAR	08-24-2015	10-14-2015
OAD	C	RESUME WRITING	08-26-2015	09-15-2015
OAD	C	HAZARD COMMUNICATION	09-14-2015	09-28-2015
OAD	C	CURSOS DEL SIGLO 21D	08-10-2015	08-19-2015
OAD	C	PREDATORS	06-22-2015	07-23-2015
OAD	C	GEOGRAPHY 100	06-22-2015	07-17-2015
OAD	C	ENGLISH AS SECOND LANGUAGE PM	04-09-2014	06-18-2015
OAD	C	PAROLE TO PAYROLL	05-28-2015	06-02-2015
OAD	C	SUCCESS IN JOB WORLD	05-28-2015	06-08-2015
OAD	C	SAFETY TRAINING	04-28-2015	05-12-2015
OAD	C	ANTICENT CIVILIZATION	04-28-2015	05-18-2015
OAD	C	NATIONAL GEOGRAPHIC 2	04-06-2015	04-10-2015
OAD	C	HEALTH	04-06-2015	04-16-2015
OAD	C	TRAILS OF LIFE	03-16-2015	03-25-2015
OAD	C	REFRESH MATH	03-16-2015	03-27-2015
OAD	C	NATL GEO	03-16-2015	03-27-2015
OAD	C	PHOTO II	02-18-2015	02-27-2015
OAD	C	ALGEBRA 1	02-18-2015	02-27-2015
OAD	C	PARENTING RPP6	11-25-2014	02-03-2015
OAD	C	ELECTRICAL CODES	01-13-2015	02-03-2015
OAD	C	COMMUNICATION SKILLS	01-13-2015	01-26-2015
OAD	C	PROFESSIONAL CUSTODIAN	12-15-2014	12-22-2014
OAD	C	INTRO TO BUSINESS	07-21-2014	07-25-2014
OAD	C	ELECTRICITY	07-21-2014	07-25-2014
OAD	C	TYPING ADVANCED	06-17-2014	07-11-2014
OAD	C	CAREERS OF THE 21ST CENTURY	06-24-2014	06-27-2014
OAD	C	SELF ESTEEM	06-24-2014	07-01-2014
OAD	C	TYPING INTERMEDIATE	05-27-2014	06-16-2014
OAD	C	MARKETING	05-20-2014	05-30-2014
OAD	C	TYPING BEGINNING	04-24-2014	05-23-2014
OAD	C	SMART MONEY	04-24-2014	05-01-2014
OAD	C	SPANISH GEOGRAPHY	04-01-2014	04-08-2014

Discipline History (Last 6 months)

Hearing Date	Prohibited Acts
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** NO INCIDENT REPORTS FOUND IN LAST 6 MONTHS **

Current Care Assignments

Assignment	Description	Start
CARE1-MH	CARE1-MENTAL HEALTH	04-03-2014
CARE2	STABLE, CHRONIC CARE	09-03-2019

Current Medical Duty Status Assignments

Assignment	Description	Start
NO PAPER	NO PAPER MEDICAL RECORD	03-26-2014
REG DUTY	NO MEDICAL RESTR--REGULAR DUTY	11-21-2019
SOFT SHOES	SOFT SHOES ONLY	11-21-2019
YES F/S	CLEARED FOR FOOD SERVICE	11-21-2019

Current Drug Assignments

Sentry Data as of 03-04-2020

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Assignment	Description	Start
ED NONE	DRUG EDUCATION NONE	05-07-2014

FRP Details

Most Recent Payment Plan

FRP Assignment: **COMPLT** **FINANC RESP-COMPLETED** Start: **07-10-2014**Inmate Decision: **AGREED** **\$387.50** Frequency: **QUARTERLY**Payments past 6 months: **\$0.00** Obligation Balance: **\$0.00****Financial Obligations**

No.	Type	Amount	Balance	Payable	Status
1	ASSMT	\$100.00	\$0.00	IMMEDIATE	COMPLETEDZ
** NO ADJUSTMENTS MADE IN LAST 6 MONTHS **					
2	FINE	\$5,000.00	\$0.00	IMMEDIATE	COMPLETEDZ
** NO ADJUSTMENTS MADE IN LAST 6 MONTHS **					

Payment DetailsTrust Fund Deposits - Past 6 months: **\$2,000.00**Payments commensurate ? **Y**

New Payment Plan:

**** No data ******Progress since last review**

Last Team was 9/20/2019. Completed Logistics, Spanish 3, and Intro to Commodities. Currently enrolled in numerous classes. Maintained a work assignment, with good work performance.
 Maintained clear conduct since last review.
 Maintained good personal hygiene and room sanitation.

Next Program Review Goals

Currently enrolled in numerous classes. Continue to participate as directed thru next review. Current work assignment is FS AM DR. Continue to maintain work assignment and Good work performance daily thru next review.

Long Term Goals

Obtain SS card and birth certificate by 1/2032. Complete Release Preparation Program Seminar by 1/2032.

RRC/HC Placement**Comments**

Treaty Transfer: Eligible and not interested.
 5 POINTS, 8/30/2019

Maintain clear conduct daily thru PRD by not incurring any incident reports.

Maintain good personal hygiene and room sanitation daily thru next review.

Maintain family/community ties by calling/writing at least twice/month.

Second Chance Act Review will be conducted 17-19 months from PRD.

Finance/Poverty Need Screen YES - No assets

FSA - Inelig/Min

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#84193-279 VA-Unit
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Legal Mail
cc

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